IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1586 of 2001
(Old No. 2385/1984)

1. Fate Singh, S/o Rati Singh
2. Vikram Singh, S/o Rati Singh
3. Sunder Singh, S/o Rati Singh
4. Jai Singh, S/o Rati Singh
5. Balvir Singh, S/o Rati Singh
6. Survir Singh, S/o Fateh Singh
7. Narayan Singh, S/o Matlab Singh
8. Gaber Singh, S/o Matlab Singh
9. Mohan Singh, S/o Surat Singh
10. Dharam Singh, S/o Surat Singh
11. Bachan Singh, S/o Surat Singh
12. Matlab Singh, S/o Badri
13. Sunder Singh, S/o Amar Singh
14. Hari Singh, S/o Sri Chand

All R/o Village Gamder
P.S. Uttarkashi, District Uttarkashi …Appellants

Versus

State …….Respondent.

Shri B.S. Adhikari and Shri B.S. Negi, learned counsel for the appellants.
Shri Rajeev Mohan Birkhani, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 13.08.1984, passed by learned Session Judge Uttarakshi, in Sessions Trial No. 01 of 1984, whereby appellants Fate Singh, Vikram Singh, Sunder Singh (S/o Rati Singh), Jai Singh, Balvir Singh, Survir Singh, Narayan Singh, Gaber Singh, Mohan singh, Dharam singh, Bachan Singh, Matlab Singh, Sunder Singh (S/o Amar Singh) and Hari Singh, have been convicted under Sections 325/149, 324/149 and 323/149 of Indian

Penal Code, 1860 (for brevity hereinafter referred as I.P.C.) and each one of them has been sentenced to undergo rigorous imprisonment for a period of three years (under Section 325/149 I.P.C.), rigorous imprisonment for a period of two years (under Section 324/149 I.P.C.) and rigorous imprisonment for a period of one year (under Section 323/149 I.P.C.) Appellant Fate Singh has been further convicted and sentenced to rigorous imprisonment for a period of one year (under Section 148 I.P.C.) and rigorous imprisonment for a period of six months (under Section 147 I.P.C.).

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story, in brief, is that on 18.11.1982, at about 10:00 A.M. P.W. 1 Tara Singh, Amar Singh, Pratap Singh, Moti Singh, Badar Singh, Jot Singh, Ramchandra Singh, Vijay Ram and Shiv Ram, were proceeding from their village for Uttarkashi for selling their milk. When they reached near chowk of P.W. 3 Bachan Singh, they met accused persons namely Fate Singh, Vikram Singh, Sunder Singh (S/o Rati Singh), Jai Singh, Balvir Singh, Survir Singh, Narayan Singh, Gaber Singh, Mohan Singh, Dharam Singh, Bachan Singh, Matlab Singh, Sunder Singh (S/o Amar Singh) and Hari Singh. The said fifteen persons were armed with iron pipes, iron rods, khukries and lathies. They caused injuries on the person of afore mentioned Tara Singh and others. It is alleged that as many as ten persons were injured. First Information Report (Ext. A-

14) was lodged with the police station Uttarkashi on 18.11.1982, at 11:45 A.M. P.W. 9 S.I. G.S. Semwal, investigated the crime. Injuries of Shiv Ram, Badar Singh, Pratap Singh, Tara Singh and other were recorded in the District Hospital, Uttarkashi. After investigation, a charge sheet was submitted to Magistrate against fifteen accused persons, named above, for their trial relating to offence punishable under Sections 147, 307, 324, 325, 452 I.P.C.

4. On receipt of the charge sheet, it appears that the Magistrate concerned , after giving necessary copies to the accused persons, as required under Section 207 of Cr.P.C., committed the case for trial, to the Court of Sessions Judge. The Sessions Judge after hearing the prosecution and the defence, framed charge of offences punishable under Sections 147, 307 read with 149 I.P.C. against the accused/appellants Vikram Singh, Sunder Singh, Jai Singh, Balvir Singh, Survir Singh, Naryan Singh, Gabar Singh, Matlab Singh, Mohan Singh, Dharm Singh, Bachan Singh, Surat Singh, Sunder Singh and Hari Singh. A separate charge was filed against accused Fate Singh, relating to offences punishable under Sections 148, 307 read with 149 and 452 I.P.C. All the accused persons, pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Tara Singh, P.W. 2 Dr. B.P. Joshi, P.W. 3 Bachan Singh, S/o Jabar Singh, P.W. 4 Murti Singh, P.W. 5 Prem Singh, P.W. 6 Constable Maya Ram, P.W. 7 Constable Alam Singh, P.W. 8 Vikram Singh, S/o Kundan Singh and P.W. 9 Girja Shanker

Semwal, Investigating Officer. The oral and documentary evidence was put to the accused persons under Section 313 of Cr.P.C. in reply to which the accused alleged that they were attacked by Shiv Ram, Vijay Ram, Pratap Singh, Jot Singh, Moti Singh, Badar Singh, Tara Singh, Abbal Singh and Ram Chandra Singh. It is alleged by them in self defence, they also used sickle and lathis, they were armed with. In defence, D.W. 1 Fate Singh, D.W. 2 Makhan Singh and D.W. 3 Gabar Singh, were examined.

5. The trial court after hearing the parties, convicted fourteen accused and sentenced them, as mentioned earlier. Only accused Surat Singh was acquitted of the charge, giving him benefit of doubt. Aggrieved by said judgment and order dated 13.08.1984, passed by the trial court, this appeal was preferred before Allahabad High Court in the year 1984 from where it has been received by transfer under Section 35 of U.P. Reorganisation Act, 2000.

6. The First Information Report (Ext. A-14) discloses as many as sixteen persons including that of Rati Singh, who was aged 87 years. It is hard to believe that such infirm person would have participated in the crime, as such the Investigating Officer, submitted the charge sheet only against fifteen out of sixteen. The trial court during trial found that Surat Singh was aged 82 years and the trial court also felt that said accused could not have participated in the crime in the manner, alleged by the prosecution and he was acquitted.

However, trial court found others guilty of offence punishable under Sections 325/149, 324/149 and 323/149 but did not found them guilty of offence punishable under Section 304 I.P.C.

7. There is no doubt there are injuries on some of the witnesses, examined before the trial court. But the accused persons have come with a story of self defence. There story of self defence is not mere assertion but they led evidence in support of story of self defence. According to D.W. 1 Fate Singh, it is alleged by him that he along with his other colleagues on way to cut grass from the jungle, were sitting at Panchayati Chowk when they were attacked by the complainant and his associates. From the evidence of both the sides, it is evidently clear, rather it is admitted that there was enmity between the parties after the election of Pradhan. The complainant party are Negis and the accused persons are Pawars. D.W. 1 Fate Singh, has stated admitting that he and Narayan Singh did cause injuries on the person of complainant side but it was done only in self defence after they were attacked by them. The trial court appears to have not appreciated the evidence, adduced by defence properly. The evidence of the defence witnesses have been discarded without sufficient reasons. Plea of alibi raised by D.W. 3 Gabar Singh that he was in school on the day of the incident, has been rejected though the same was corroborated by the documentary evidence. D.W. 2 Makhan Singh, who is Head Master of the School, has stated that on the date of the incident, the accused

Bachan Singh was teaching his class at 10:00 A.M. His evidence has also been discarded lightly by the trial court. Out of ten injured persons, only three appears to have been examined and even from amongst them, P.W. 5 Prem Singh and P.W. 8 Vikram Singh have not supported the prosecution story in the manner, alleged by the prosecution.

8. In the above circumstances, for the reasons, as discussed above, in the opinion of this Court, it cannot be said that the prosecution has successfully proved the charge against the accused persons beyond reasonable doubt. Accused/appellants are entitled to the benefit of reasonable doubt. Therefore, this appeal deserves to be allowed. The same is allowed. The impugned order dated 13.08.1984, passed by the learned Sessions Judge, in Sessions Trial No. 01 of 1984, is set aside. The appellants are acquitted of charge of offence, punishable under Section 325/149, 324/149, 323/149 I.P.C. Appellant Fate Singh is also acquitted of the charge punishable under Section 148 and 149 I.P.C. They are on bail. The need not surrender. Their bail bonds are cancelled. (Appeal of appellants Vikram Singh, S/o Rati Singh, Jai Singh and Matlab Singh, S/o Badri, in view of their death during the pendency of the appeal stands abated).

Dt. 17.10.2006 **(Prafulla C. Pant, J.)**

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